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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,965	06/21/2001	Russell L. Kress	Kress 400	5029
7590 Mr. Edward J. Timmer Walnut Woods Centre 5955 W. Main Street Kalamazoo, MI 49009				
EXAMINER LAUX, JESSICA L				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
05/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/886,965

**Applicant(s)**

KRESS, RUSSELL L.

**Examiner**

Jessica Laux

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-9, 18, 24, 25, 28-34, 43, 44, 46, 48-51 and 53-61 is/are pending in the application.
- 4a) Of the above claim(s) 1, 3-9, 18, 43, 44, 46, 48-51, 53-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-25, 28-34, 60-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, Species III in the reply filed on 02/26/2008 is acknowledged. Examiner appreciates applicant's statement regarding fairness, however in order to be a proper traversal applicant must point out errors in the restriction requirement. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1, 3-9, 1843-44, 48-51, 53-59 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group or species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 24, 25, 28-30, 33-34, 60-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Fortune (5111626).**

Claims 24, 61: Fortune discloses a modular living enclosure for occupancy by a person, comprising:

a plurality of molded plastic enclosure sections that are assembled to define an enclosure floor, four upright side walls, a top wall and a door opening when assembled (col. 3, lines 4-10 and 60-63),

at least some of said enclosure sections being molded to form a bathroom feature including one or more of a toilet, a shower head molded as part of a wall of one

of said enclosure sections with said wall being provided with holes at said shower head through which shower water is discharged, and a floor drain molded on a floor of another of said enclosure sections (Col. 6, lines 2-5) for draining water from inside to outside of said enclosure (as seen in the figures); and

a furniture feature (such as desk 42) including one or more of a bed surface above said floor and a desk surface above said floor in said enclosure.

Claim 25: The enclosure of claim 24 wherein said enclosure sections each having a wall with an abrasion resistant, ceramic particulate-filled resin layer defining an interior surface of said enclosure (Col. 3, lines 60-63).

Claim 28: The enclosure of claim 24 wherein said enclosure includes a lighting fixture (123; Col. 7, line 14) disposed on a top enclosure section.

Claim 29: The enclosure of claim 24 wherein said enclosure includes a ventilation fan (89 Col. 6, lines 29-35) disposed on a top enclosure section.

Claim 30: The enclosure of claim 24 wherein said enclosure includes a monitoring camera (Col. 7, lines 53-55) disposed on a top enclosure section.

Claim 33: The enclosure of claim 24 wherein said enclosure includes a temperature detecting thermocouple disposed on a top enclosure section (88 or 115; Col. 6, lines 29-35 or Col. 7, lines 3-16).

Claim 34: The enclosure of claim 24 wherein said enclosure includes an emergency signal switch operable by a person therein (122; Col. 7, lines 12-15).

Claim 60: The modular living enclosure of claim 24 including a programmable computer control unit (119; Col. 7, starting at line 17) connected to an actuator for water supply to the toilet or shower head.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fortune (5111626).**

Claims 31-32: Fortune discloses the enclosure of claim 24 but does not disclose that the enclosure includes a sprinkler disposed on a top enclosure section wherein a wall of at least one of said enclosure sections includes water discharge holes beneath said sprinkler said enclosure includes holes in a top section beneath said sprinkler.

However, it is notoriously common and well known in the art that building codes require that enclosures housing people must be equipped with fire suppression systems such as a sprinkler placed above the enclosure to spray water in case of fire. Therefore it would have been obvious to a person of ordinary skill in the art to include a sprinkler system in the enclosure of Fortune.

It is further noted that it is notoriously common and well known in the art that utilities and fixtures be concealed in a jail cell as exposed fixtures may be tampered with to be used as a weapon by a detainee and because repair/ maintenance of fixtures

exposed to detainees may be dangerous to the person performing the work on the fixture. Therefore it would have been obvious and well within the skill of one of ordinary skill in the art to pursue a design to conceal the sprinkler system and upon success of such a design it is determined to likely be a product not of innovation but of common sense.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3633

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633

/J. L./  
Examiner, Art Unit 3635